

**Talking points for Deepwater Horizon Oil Spill Cleanup and USACE Corps
Regulatory Requirements under Section 10 of the Rivers and Harbors Act and
Section 404 of the Clean Water Act**

- As a general rule, the Corps would identify any appropriate Nationwide Permits that may be used to rectify an emergency situation, prior to the commencement of the emergency permit procedures.
- While Nationwide Permit 20 authorizes activities required for the containment and cleanup of oil and hazardous substances, the work must be done in accordance with the Spill Prevention, Control, and Countermeasure (SPCC) Plan (SPCC Plan) on record for a specific rig operation. To our knowledge, the Deepwater Horizon rig was not required to file an SPCC Plan consistent with the Environmental Protection Agency's (EPA) regulations. As such, we have determined that activities associated with this spill, specifically, would not be authorized under Nationwide Permit 20.
- In lieu of using NWP 20, Corps regulations do provide a provision to process Standard Individual Permits and Letters of Permission using expedited emergency procedures. Emergency permitting procedures are described at 33 CFR 325.2(e)(4).
- The New Orleans District has a Regional General Permit (NOD-20) that is intended to be used in response to emergencies. This Regional General Permit contains the same provisions that are codified in the Corps regulations for Emergency Permit Procedures. To the extent practicable, the New Orleans District will authorize emergency response activities under the NOD-20.
- The State of Louisiana proposal is currently being considered under NOD-20 guidelines. Under these procedures, the applicant will submit a proposal to the appropriate district office and request that the permit application be processed. This was done on May 11. Along with the request, the applicant will be required to submit basic project information. This information will be reviewed and coordinated, in meetings similar to the one held May 13, with the other Federal, state and local resource agencies. Upon completion of this review, the District Engineer will make a decision as to whether or not the project should be authorized. Following authorization, the district will be responsible for completing the National Environmental Policy Act (NEPA) process.
- The South Atlantic Division Commander has authorized emergency permit procedures to be used for activities associated with clean up and containment activities specific to the Deepwater Horizon Incident. Under these procedures, the applicant would submit a proposal to the appropriate district office and request that the permit application be processed under the emergency procedures provision in the regulations. Along with the request, the applicant would be

required to submit basic project information. This information would be reviewed and coordinated, informally, with the other Federal, state and local resource agencies. Upon this review, the District Engineer would make a decision as to whether or not a project should be authorized. Following authorization, the district would be responsible for completing the National Environmental Policy Act (NEPA) process. There have been a total of six permits authorized under these procedures in the South Atlantic Division, in response to the Deepwater Horizon Incident.

- The intent of the emergency permit procedures is to provide a timely authorization in response to a situation that, if left unmitigated, could result in loss of life, property, or significant economic hardship. Each division is responsible for developing procedures to process emergency permits. Coordination may be via email, phone, or fax. The timing of the emergency permit process can vary, depending upon the complexity of the project under review.
- Even under the emergency permit procedures, the Corps is still required to comply with NEPA and other applicable laws. Under the emergency permit procedures, the Corps will conduct its NEPA review and environmental compliance process, as soon as practicable, after a permit is granted. This would include a full public interest review of any project authorized using emergency procedures.
- In light of recent guidance issued by the Council on Environmental Quality (CEQ), during the course of the emergency permit review, the Corps must coordinate with CEQ, any proposed activity associated with the Deepwater Horizon Incident that would result in significant environmental impacts. The CEQ, in consultation with the Corps and other Federal and state resource agencies, will then develop alternative arrangements to fulfill NEPA requirements while continuing to respond to the emergency situation as expeditiously as possible.
- Under the emergency permit procedures, the EPA retains its authority under 33 U.S.C. 1344(c) to veto any Corps action at any time. EPA also retains its authority to elevate any permit decision through the 404(q) referral process.
- In the event that there are Endangered Species Act concerns, the Corps would have to engage in emergency Section 7 consultation and the Fish and Wildlife Service and the National Marine Fisheries Service retain their authority to elevate a permit through the 404(q) referral process.

The District and Division Engineers have the discretionary authority to determine if a proposed activity qualifies as an emergency action and whether it is subject to the emergency procedures provisions set forth in the regulations.